THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION NO.25620 OF 2001

O R D E R:

This writ petition is filed in the nature of Certiorari calling for the records relating to the Award dated 17.06.2000 passed in I.D.No.187 of 1989 on the file of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and also the consequential publication of the award in G.O.Rt.No.1604, Labour Employment Training & Factories (Lab.I) Dept., dated 30.08.2000, to set aside the same as illegal, unjust, without any basis and against the principles of natural justice and also to set aside the punishment imposed against the petitioner and further direct the respondents to reckon the services of the petitioner with effect from 20.10.1987 for the purpose of seniority with all consequential benefits.

It is the case of the petitioner that he was appointed as Driver in the respondent organization in March 1987 and his services were regularized on 20.10.1987. While the petitioner was working at Uppal Depot, he applied for leave seeking two weeks time in order to go to his native place, but he was granted leave for one week only. There after, as the petitioner was bedridden, he failed to attend duties from 21.05.1997 to 20.03.1998. Though the petitioner produced Medical Certificate at the time of joining, the respondent authorities did not allow him to join duty, but they asked him to submit his comments or objections to the ex parte enquiry for having unauthorisedly absent to duties. Basing on the ex parte enquiry report submitted by the first respondent-Depot Manager, a show cause notice dated 12.08.1998 was issued to the petitioner as to why he should not be removed from service. On 17.08.1998 the petitioner submitted his explanation denying all the allegations. The first respondent without considering the explanation submitted by the petitioner

passed final orders on 17.09.1998 imposing punishment of removal from service. Against the said order of removal, the petitioner preferred an appeal before the second respondent-Divisional Manager, A.P.S.R.T.C., Hyderabad and the appellate authority by its order, dated 29.01.1999 rejected the same. Aggrieved of the same, the petitioner made a representation before the second respondent on 01.03.1999 and the same was partly allowed, appointing the petitioner afresh as Driver in Grade-II with effect from 06.08.1999 at Ranigunj-I Depot. Against the order of the second respondent, the petitioner filed I.D.No.187 of 1999 before the Additional Industrial Tribunal-cum-Labour Court, Hyderabad. Considering the enquiry report submitted by the first respondent, the Labour Court by order, dated 27.06.2000 dismissed the said I.D. Challenging the same, this writ petition is filed.

The learned counsel for the petitioner contended that without giving any opportunity to the petitioner to participate in the enquiry, the respondent authorities passed orders against the principles of natural justice. He further contended that the punishment of removal as modified by the Reviewing authority to that of reinstatement as Conductor afresh is disproportionate to the misconduct alleged against him and therefore, he prays to modify the same.

On the other hand, the learned Standing Counsel appearing for the respondents contended that since it is a case of unauthorized absence of the petitioner from duty for more than eight months and while leaving the native place, it is the duty of the petitioner to furnish correct address to the respondent-Corporation. As the petitioner did not inform about his whereabouts till 10.08.1998, the respondent authorities sent notices to the residential address of the petitioner and the same were returned with an endorsement ‘left’. Since registered posts have not been claimed and no reasons were putforth by the petitioner for undergoing treatment at Mahabunagar, departmental enquiry was conducted by the officials of the respondent-Corporation after exhibiting notice in the notice board and therefore, there are no grounds to

interfere with the order. As the Regional Manager already took a lenient view in setting aside the order of removal of the petitioner to that of fresh appointment as Driver Grade-II, no grounds are there to interfere with the order. Hence, the revision petition is liable to be dismissed.

The charge levelled against the petitioner is that he was unauthorisedly absent to duty from 21.05.1997 to 20.03.1998. Before conducting regular enquiry, the petitioner was served with notices and the same were returned with an endorsement 'left'. Therefore, after affixing notices in the notice board, a regular departmental enquiry was conducted by the Enquiry Officer. He submitted his report before the Depot Manager. On 17.09.1998 the first respondent-Depot Manager passed final orders of removal. Against the said order, the petitioner preferred an appeal before the Divisional Manager, Hyderabad Division and the same was rejected. There after, the representation made by the petitioner before the second respondent-Regional Manager was partly allowed by appointing the petitioner as Driver Grade – II afresh, with effect from 06.08.1999 at Ranigunj-I Depot. As the petitioner failed to furnish the particulars of his whereabouts, it cannot be said that the impugned order was passed without giving any opportunity to the petitioner. Both the Enquiry Officer as well as the disciplinary authority took all possible steps to intimate the petitioner before conducting the enquiry. Therefore, the Tribunal rightly held that there is misconduct on the part of the petitioner and thereby dismissed I.D.No.187 of 1999, confirming the order of the second respondent.

Now the question that arises for consideration is whether the Tribunal exercised its discretion while imposing punishment under Section 11(A) of the Industrial Disputes Act, 1947.

The misconduct alleged against the petitioner is that without applying for any leave or informing the authorities, he was absent from duties for morethan 8 months. Taking into consideration the past conduct of the petitioner, the reviewing authority

showed some sympathy on the petitioner and held that the punishment imposed by both the disciplinary authority and the appellate authority is too harsh and thereby ordered for reinstatement of the petitioner as Driver-Grade-II afresh. Hence, it cannot be said that the punishment imposed by the reviewing authority is disproportionate to the misconduct alleged against the petitioner. Therefore, I am of the view that the Tribunal rightly dismissed I.D.No.187 of 1999 and there are no grounds to interfere with the same.

The writ petition is, therefore, dismissed. No costs.

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K.C.BHANU J.,

Dt.10.08.2005

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